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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 775.

ANDREW C. BRADLEY, TO THE USE OF ALEXANDER R. SHEPHERD, TO THE USE OF GEORGE TAYLOR, SAMUEL CROSS, AND PETER F. BACON, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED SEPTEMBER 17, 1878.

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2 United States Court of Claims.

No. 11,456.—Filed December 7, 1876.—J. R.

ANDREW C. BRADLEY, TO THE USE OF ALEXANDER R. Shepherd, to the use of George Taylor, Henry A. Willard, and Samuel Cross, Trustees,
vs.
THE UNITED STATES OF AMERICA.

To the Honorable the Judges of the Court of Claims:

Your petitioners, Andrew C. Bradley and Alexander R. Shepherd, and George Taylor, Henry A. Willard, and Samuel Cross, trustees, citizens of the United States residing and domiciled in the city of Washington, District of Columbia, respectfully represent—

I. That heretofore, to wit, on the 6th day of June, in the year 1873, the said Andrew C. Bradley, by his indenture of lease, bearing date the year last aforesaid, whereunto the said Andrew C. Bradley was party of the first part, and John A. J. Creswell, Postmaster-General, for and on behalf of the United States of America, was party of the second part, for and in consideration of the rents, covenants, and agreements in said lease specified, demised and leased unto the said United States of America, those certain premises, with the four-story brick house and brick stable thereon, situated on the north side of E street, between Ninth and Tenth

3 streets, in the city of Washington, in the District of Columbia, and known as house numbered 915 on said E street northwest, for the term of three years from and after the 5th day of June, A. D. 1873, with the privilege to the said United States of a renewal of the said term, for the further period of two years, at and for the annual rent during the said term and a subsequent renewal thereof, of four thousand two hundred dollars ($4,200), payable quarterly on the 30th day of September, the 31st day of December, the 31st day of March, and the 30th day of June.

That in and by said lease it was understood and agreed that said lease was made subject to an appropriation by Congress for the payment of the rental therein stipulated for, and that no payment should be made to the said Andrew C. Bradley on account of such rental until such appropriation should be available, and that as soon as practicable after such appropriation should become available the arrears of the rent then due should be paid in full, and thereafter payment should be made at the times and in the manner therein before stipulated.

That in and by said lease it was further understood and agreed that the said Andrew C. Bradley, party of the first part, should, at his own expense, remove such partitions and construct such partitions and necessary doorways and doors in said building, and construct such water-closets, with the necessary water connections, as might be required by the supervising architect of the Treasury De-

partment; and would leave in good order all the gas-fixtures then in said building, and pay all taxes and assessments legally levied or charged upon said property; all of which said covenants and agreements will fully and at large appear from the original of said lease when produced, a true copy of the same being contained on the 12th page of No. 42 of the Miscellaneous Documents, House of Representatives, 43d Congress, 1st session, a copy of said document being produced and filed herewith and made a part hereof, and marked

A. R. S., Exhibit No. 1.

4 II. That immediately upon the signing and delivery of said lease the premises therein described were taken possession of and occupied for and on behalf of the said United States of America, and from the date when occupation and possession was taken as aforesaid, were continuously, until the expiration of said term of three years, and have since continuously been used, occupied, and possessed by the employees of the Post Office Department, under the authority and direction of the Postmaster-General of the United States of America, for the benefit of the government of the United States of America, for the transaction of public business.

III. That all the agreements made and entered into by the said Andrew C. Bradley, on his part, have been fully and faithfully performed and kept.

IV. That after said lease was signed and delivered, to wit, on the 16th day of December, 1873, the said John A. J. Creswell, Postmaster-General, as aforesaid, communicated to the Congress of the United States, through the Hon. John A. Garfield, chairman of the Committee on Appropriations of the House of Representatives, the facts showing the exigency of the public service which required the use of said premises for office purposes, and a copy of said lease, as is shown by said Miscellaneous Document No. 42, already marked A. R. S., Exhibit No. 1, in this case, and which, it is prayed, may be taken and considered as a part of this petition.

V. That said communication having been duly considered, the deficiency bill reported by said Committee on Appropriations, being House Bill No. 3,030, 43d Congress, 1st session, contained the following provisions:

"For rent of house numbered nine hundred and fifteen E street northwest, for further accommodation of the clerical

5 force of the department, from June sixth, eighteen hundred and seventy-three, to June thirtieth, eighteen hundred and seventy-four, four thousand four hundred and eighty-eight dollars and eighty-six cents; and hereafter no contract shall be made for the rent of any building, or part of any building, in Washington, to be used for the purposes of the government, until an appropriation therefor shall have been made in terms by Congress."

VI. That said bill, as reported to the Senate of the United States by the Senate Committee on Appropriations, contained the following provision:

"For rent of house numbered nine hundred and fifteen E street northwest, for further accommodation of the clerical force of the department, from June sixth, eighteen hundred and seventy-three, to June thirtieth, eighteen hundred and seventy-four, four thousand four hundred and eighty-eight dollars and eighty-six cents; and hereafter no contract shall be made for the rent of any building, or part of any building, in Washington, *not before in use by the government*, to be used for the purposes of the government, until an appropriation therefor shall have been made in terms by Congress."

VII. That by the deficiency bill for the fiscal year 1873–1874, as finally passed by the Congress of the United States, it was enacted that there be appropriated—

"For rent of house numbered nine hundred and fifteen E street northwest, for further accommodation of the clerical force of the department, from June sixth, eighteen hundred and seventy-three, to June thirtieth, eighteen hundred and seventy-four, four thousand four hundred and eighty-eight dollars and eighty-six cents; and hereafter no contract shall be made for the rent of any building, or part of any building, in Washington, not now in use by the government, to be used for the purpose of the government, until an appropriation therefor shall have been made in terms by Congress."—(See Stats. at Large, vol. 18, p. 144.)

VIII. That by the act of Congress entitled "An act making
6 appropriations for the legislative, executive, and judicial expenses of the government, for the year ending June thirtieth, eighteen hundred and seventy-four, and for other purposes," there was appropriated for rent of house numbered nine hundred and fifteen E street northwest, four thousand two hundred dollars.—(See Stats. at Large, vol. 18, p. 107.)

IX. That accounts for the rent, and under the terms and conditions of said lease, from June 6th, 1873, to June 6th, 1874, and from June 30th, 1874, to June 30th, 1875, were made out, presented, and duly paid under and by virtue of said acts of Congress, as will appear from the originals of said accounts, copies of which are filed herewith and marked Exhibits A. R. S., Nos. 2 and 3.

X. That by reason of the premises, there became due and payable for the rent of said premises for the year ending June 30, 1876, the sum of four thousand two hundred dollars, for the payment of which said amount demand was duly made of the Postmaster-General of the United States of America, and of the various officers of the United States of whom demand could properly be made, but payment thereof was refused, and is still refused, and said sum so due as aforesaid, has not been paid, nor has any part thereof been paid, notwithstanding said demands.

XI. That considerable sums of money were expended in preparing said premises for the occupation by the employees of the Post Office Department, and in the execution and performance of the agreements contained in said lease, and that for the use and oc-

cupation of said premises, considering the situation and value thereof, and the expenditures made thereon, the said sum of $4,200 per annum, was no more than a fair and reasonable compensation.

XII. That at the time said lease was made and executed as aforesaid, on the 16th day of June, 1873, the legal title
7 in and to said premises were vested in the said Andrew C. Bradley, but was held by him to the use and benefit of the said Alexander R. Shepherd, the equitable owner thereof; that afterwards, to wit, on the 24th day of August, 1874, the said Andrew C. Bradley sold and conveyed said premises to the said Alexander R. Shepherd, and on the 21st day of November, 1874, assigned said lease to said Shepherd, and directed all payments of moneys due, and to become due, under said lease, to be made to the said Alexander R. Shepherd; and that afterwards, to wit, on the 15th day November, 1876, the said Alexander R. Shepherd, by his indenture of that date, assigned and transferred all his right and interest in and to this demand and claim, to the said George Taylor, Henry A. Willard, and Samuel Cross, in trust for the benefit of the creditors of him, the said Alexander R. Shepherd.

XIII. That by reason of these premises there became and is due from the United States of America, to the said Andrew C. Bradley, to the use and for the benefit of the said Alexander R. Shepherd, and the said George Taylor, Henry A. Willard, and Samuel Cross, trustees, as aforesaid, the said sum of $4,200; and that the petitioners are justly entitled to said amount after allowing all just credits ond offsets.

XIV. That no assignment or transfer of this claim, or any part thereof, or interest therein, has been made, except as stated in this petition.

XV. That the petitioners are, each of them, citizens of the United States, and have at all times borne true allegiance to the government of the United States, and have not, in any way, voluntarily aided, abetted, or given encouragement to rebellion against the government of the United States; and that the facts stated in this petition are true.

8 Wherefore your petitioners pray that judgment may be entered in favor of the said Andrew C. Bradley, to the use and benefit of Alexander R. Shepherd, and George Taylor, Henry A. Willard, and Samuel Cross, his trustees, as aforesaid, for said sum of four thousand two hundred dollars.

The address of the petitioners is Washington, D. C.; and the address of their attorney, Nathaniel Wilson, is No. 635 F street, Washington, D. C.

A. C. BRADLEY.
ALEX. R. SHEPHERD.

GEORGE TAYLOR,
HENRY A. WILLARD,
SAMUEL CROSS, } *Trustees.*

DISTRICT OF COLUMBIA:

Be it remembered, that on this 5th day of December, A. D. 1876, before the subscriber, an United States commissioner for the district aforesaid, personally appeared Andrew C. Bradley, who being first duly sworn, deposes and says, that he has carefully read the foregoing petition by him subscribed, and knows the contents thereof, and that the facts therein stated are true, to the best of his knowledge and belief.

[SEAL.]

HENRY R. ELLIOTT,
U. S. Comm'r for the District of Columbia.

9 EXHIBITS.

A. R. S.—Exhibit No. 1.—Henry R. Elliott, Com'r.

43d Congress, 1st Session.	House of Representatives.	Mis. Doc. No. 42.

Estimates, Vouchers, and Explanations of Deficiency Estimates.

Letter from the Postmaster-General to Hon. James A. Garfield, Chairman of the Committee on Appropriations, with Estimates, Vouchers, and Explanations of Deficiency Estimates.

December 17, 1873.—Referred to the Committee on Appropriations and ordered to be printed.

POST OFFICE DEPARTMENT,
WASHINGTON, D. C., *December* 16, 1873.

SIR: I have the honor to make the following request, viz:

1st. That to the bill making appropriations out of any money in the treasury not otherwise appropriated, for supplying deficiencies for the fiscal year ending June 30, 1874, there be inserted the sum of $5,633.33, being amount required to meet the expense incurred in alterations and improvements to the Post Office building, made necessary by the change of grade of Eighth street, (see paper herewith marked A,) and the sum of $4,488.46, being amount required for rent of house No. 915 E street northwest, from June 6, 1873, to June 30, 1874.

2d. That the sum of $4,200 be added to the estimate for contingent expenses of the Post Office Department on page 47 of the Secretary of Treasury's book of estimates for the fiscal year ending June 30, 1874, for rent of building above mentioned. The papers herewith, marked B, numbered 1 to 14 inclusive, set forth the exigency of the service in requiring the use of the said house for office purposes.

3d. That the sum of $2,101.87, amount due special agents of this department, be appropriated out of the deficiency in the

10 postal revenue for fiscal year ended June 30, 1872. (See paper herewith, marked C.)

I am, sir, very respectfully, &c.,

JNO. A. J. CRESWELL,
Postmaster-General.

Hon. J. A. GARFIELD,
Chairman Committee on Appropriations, House of Rep.

Schedule of papers accompanying letter of Postmaster-General to Chairman of Committee on Appropriations, House of Representatives.

Letter.	Subject.
A	Report of supervising architect on bill of M. J. Emery & Bros.
B 1	Report on the necessity for more room.
B 2	Schedule of proposals for renting buildings to the Post Office Department.
B 3	Report of the supervising architect on building.
B 4	Report of the chief clerk supervising architect's office and assistant superintendent State Department on buildings.
B 5	Supplemental report of above officers.
B 6	Proposal for rent of premises 1000, 1002, and 1004 F street.
B 7	Proposal for rent of premises 809 E street.
B 8	Proposals for rent of premises 508 Ninth street.
B 9	Proposals for rent of premises 708 E street.
B 10	Proposals for rent of premises 618 F street.
B 11	Proposals for rent of premises 915 E street.
B 12	Proposals for rent of premises 913 E street.
B 13	Proposals for rent of premises (May Building) Seventh and E sts.
B 14	Lease of premises 915 E street.
C	Letter of C. Cochran, jr., relative to amounts due special agents of the Post Office Department.

A.

Report of Supervising Architect on bill of M. J. Emery & Bros.

TREASURY DEPARTMENT,
OFFICE OF SUPERVISING ARCHITECT, *February* 28, 1873.

SIR: In accordance with your instructions I have examined the bill of Messrs. M. J. Emery & Bros., for alterations and improvements to the Post Office building, rendered necessary by the change of grade of Eighth street, which made said alterations and improvements necessary in order to provide an entrance for the mail wagons to the court-yard of the General Post Office. This work was of a nature that could not be foreseen and provided for.

11 Under these circumstances Messrs. Emery & Bros. agreed to perform the work at the lowest market rates, trusting for an appropriation to be made by Congress for the amount, which proposition I recommended be accepted in my letter of October 18, ultimo, and the work has been completed.

I find, after careful examination of the vouchers for the work performed by Messrs. Emery & Brothers and the sub-contractors, that they are reasonable and proper, and not above market rates, excepting the bill of Messrs. Finegan & Nasdall, all the items of whose bill show excessive, and the bill is, in my opinion, not only exorbitant but discreditable to the contractors. Their bill amounts to $1,411; but in no event can I recommend the payment of more than $845, which would be a fair and reasonable allowance, and would give them full market rates for the labor performed. With this exception the prices, as I have previously stated, are fair and satisfactory; and I recommend that an appropriation of $5,633,33 be obtained of Congress for the settlement of this claim, which is, in my opinion, reasonable and just.

Very respectfully,

A. B. MULLETT,
Supervising Architect.

Hon. J. A. J. CRESWELL,
Postmaster-General.

B 1.

Report of Committee on Post Office Building, 1873.

POST OFFICE DEPARTMENT,
WASHINGTON, D. C., *May* 9, 1873.

SIR: The undersigned, designated by you a committee to examine the building now occupied by the Post Office Department and the sixth auditor's bureau of the Treasury Department, in order to ascertain whether it is practicable to obtain sufficient room therein to accommodate the rapidly-increasing business of the department and of the auditor's bureau, beg leave to submit the following report:

The immediate and pressing necessity for increased facilities in transacting the public business arises from the fact that Con-
12 gress at its last session authorized the appointment of fifteen clerks in the sixth auditor's office; and furthermore, the introduction of the postal-card system. The constant extension of the postal service throughout the country, the increase of the money-order business, together with other work imposed upon the department by resent congressional action, render the appointment of at least eight additional clerks absolutely necessary. These twenty-three additional clerks must be provided with room in which to perform their duties. Hence the necessity of the examination made pursuant to your instructions.

The increase in the number of post-offices in the United States, now numbering over 32,000, has caused a great increase in the labors of the department, especially in the postage-stamp and stamped-envelope division of the third assistant postmaster-general's office, and in the several divisions of the office of the auditor, and it is now found that the parts of the building assigned to these offices are insufficient to afford the room actually necessary to enable the clerks to properly perform their duties. The rooms are crowded, many of the occupants being compelled to have their desks in corners far removed from the light; in some cases clerks engaged in different kinds of work are located in the same room, causing confusion and increasing the liability to errors. In the present building there are no vacant rooms which can be made available for the accommodation of additional clerks. We have, therefore, in accordance with your suggestion, instituted inquiries with the view of ascertaining whether any building or rooms outside of the department could be secured. The only building in the neighborhood that can be obtained, as far as we are at present informed, is at No. 708 E street, immediately opposite the main entrance to the department. This building is now being repaired and fitted up by Messrs. A. L. Barber & Co., the present lessees, and it is in every way suitable, and possession can be obtained at any day. It contains some fourteen or fifteen rooms, all of good size, and many of them larger than the rooms in the Post Office building. They are all well lighted and ventilated, and in every way suited for offices. There are stationary washstands in each room and water-closets on each floor. The lessees will fit up the building in accordance with the wishes of the department, and will lease it at a rental of $400 per month.

The building is not of sufficient size to accommodate the
13 whole of any bureau of the department, and as the work of each division of the auditor's office is so intimately connected with the other, no part of that office could be removed to a separate building. The same will apply to the postage-stamp division of the third assistant postmaster-general's office, which must be retained near the auditor's office. But the topographical division of the second assistant postmaster-general's office is somewhat of an independent division, and might readily be moved to the new location, which is in every way adapted for its use. The moving of that division would vacate seven rooms in the Post Office building, which would answer the present needs of the two offices.

In submitting this we would suggest that action be taken as speedily as possible, as the room is wanted for immediate use, and the lessees of the building we have inspected are anxious to have the matter concluded, as they are receiving applications daily for the renting of rooms for offices, which, if done, will prevent its being obtained hereafter.

In view of all the circumstances, and especially the impossibility of procuring rooms in the present building for the additional clerical

force required, we feel justified in pressing upon your attention the urgent necessity of obtaining the increased accommodations, either in the manner herein suggested, or by adopting some better method, at the earliest practicable moment.

Very respectfully your obedient servants,

J. J. MARTIN,
Auditor for Post Office Department.
E. W. BARBER,
Third Assistant Postmaster-General.
J. M. McGREW,
Chief Clerk Auditor's Office.
WM. M. IRELAND,
Chief Clerk Third Assistant Postmaster-General.
A. D. HAZEN,
Principal Clerk Stamp Division.

Hon. JOHN A. J. CRESWELL,
Postmaster-General.

14 B 2.

Schedule of Proposals for Renting Buildings to the Post Office Department.

No. of offer.		Premises.	Superficial feet of space available for office purposes.	Annual rent.
(B 6)	1	1000, 1002, and 1004 F street northwest*	5,962, 1,462 of which is excellent	$3,600
(B 7)	2	809 E street northwest	2,964	Not stated.
(B 8)	3	508 Ninth st. northwest*	2,185	2,200 or 2,000
(B 9)	4	708 E street northwest *	2,610	4,200
(B 10)	5	618 F street northwest *	2,515	3,000
(B 11)	6	915 E street northwest *	3,544	4,800
(B 12)	7	913 E street northwest *	2,331	1,800
(B 13)	8	May Building, corner Seventh and E streets		6,480

*Premises included in report of May 26.

B 3.

Report of the Supervising Architect.

TREASURY DEPARTMENT,
OFFICE OF SUPERVISING ARCHITECT, *May* 29, 1873.

SIR: In accordance with your instructions, I have caused an examination to be made of the following buildings, viz: 1000, 1002, and 1004 F street, 809 E street, 508 Ninth street, 708 E street, 618 F street, 915 E street, 913 E street, and May Building, corner of Seventh and E, with a view to ascertain which of them is best adapted for clerical purposes, and which would provide the best accommodations for the portion of your department for which tem-

porary accommodations are required. The examination was made by the chief clerk of this office, A. G. Mills, esq., and the assistant superintendent of the State Department, W. T. Dewdney, esq., who is an experienced mechanic. I also examined personally such buildings as appeared from their report and from an examination of the exterior to be at all adapted to the wants of the department.

The property at the corner of F and Tenth streets, being proposition No. 1, is, in my opinion, entirely too remote from your department, and is in bad condition and undesirable.

Property known as 809 E street, being proposition No. 2, is not specially desirable, and the owner declines to fix any rent unless the department expresses a willingness to lease the building. Under these circumstances I do not think that any further consideration of these premises is necessary.

Property known as 508 Ninth street, being proposition No. 3, is a good and substantial building, but is not, in my opinion, as desirable as proposition No. 7, which is offered at a lower rent and has a north and south exposure.

Property known as 708 E street, being proposition No. 4, is, in my opinion, entirely unsuitable, there being but six rooms in the building that are adapted for clerical purposes, the basement being entirely unfit for any such purpose. The rent for this building is greatly in excess of that of any other property offered, taking into consideration the amount of accommodations.

Property known as No. 618 F street, being proposition No. 5, is a good building, but possesses no special advantage over proposition No. 3, save a north frontage, while the rent is $1,000 more.

Property known as No. 915 E street, being proposition No. 6, is undoubtedly the best building offered the department. It is larger and better lighted than any other, and has recently been placed in thorough repair and renovated from top to bottom. It has been occupied ever since its erection by the family of the owner, who was also the builder, and is as clean and well adapted for office purposes as any building that has been used as a dwelling-house can be. The only objection that can be made is the amount of rental, which is, in my opinion, rather high. The agent informs me that the owners are willing to make any alterations or improvements that the department may desire without extra cost, and I think it probable that they might be induced to reduce the rent. Should the department desire to rent it, some alterations in the interior will be required, the nature of which I have explained to the agent, and have been assured by him that the owners will make the same without charge. I recommend the lease of this property by the department, provided the terms are or can be made satisfactory to the department.

The next property is the house adjoining, known as No. 913 E street. This building is as well adapted to the wants of the department as any offered, save the one preceding, but it is considerably

smaller and much out of repair, and in need of a thorough
16 renovation, which would be indispensable before occupancy by your department, and would, as I understand, be chargeable to the department. This would be virtually an addition to the rent.

Proposition No. 8 is the building known as May's Building, and is situated on the corner of Seventh and E streets. The building is not, in my opinion, as desirable as the property known as 915 E street, while the rent is much greater. The fourth story of the building, called by the Doctor in his proposition the third story, is a mere garret, entirely unsuitable for government purposes. I see no particular advantages in the building save its proximity to the Post Office Department.

In conclusion I have to repeat that 915 E street is the most desirable property offered, and is the only premises offered that is in a fit condition for occupancy; the difference in the rent is not, therefore, as great as it would appear from the difference in the proposals.

Property No. 913 E street is offered at a lower rate than any other, and is in about as good repair as any other building, 915 alone excepted.

I would, therefore, respectfully suggest that the postmaster examine the two buildings last referred to, when he can readily decide which is best adapted to the wants of his department, and the rental of which is most desirable. I feel assured that these two buildings present the most desirable selection to be obtained in the list. The papers referred to in this communication are herewith transmitted.

Very respectfully, A. B. MULLETT,
Supervising Architect.

Hon. J. A. J. CRESWELL,
Postmaster-General.

B 4.

Report of the Chief Clerk and Assistant Superintendent State Department on buildings.

TREASURY DEPARTMENT,
OFFICE OF SUPERVISING ARCHITECT, *May* 26, 1873.

SIR: In accordance with your instructions we have exam-
17 ined the different buildings offered for rent to the Honorable Postmaster-General, for the use of the Post Office Department, and transmit the proposals for the same herewith, together with the following report:

Buildings Nos. 1000, 1002, and 1004 F street (No. 1) have a large, well-lighted room, admirably adapted for the use of draughtsmen, over the two stores in buildings 1002 and 1004. This room is 34 by 43 feet, and is now used as a dancing academy. The remainder

of the buildings is divided into small, indifferently-lighted rooms, containing in the aggregate 4,500 superficial feet of room-space. With the exception of the large room specified above, which is in good order, the buildings would require considerable outlay to adapt them to the use of the department.

Building No. 809 E street (No. 2) is a four-story brick building, with a three-story back building. It contains 2,694 superficial feet of available room-space in the main building, and has nine small rooms, indifferently lighted, in the back building.

Building No. 508 Ninth street (No. 3) is a three-story and attic brick building, with two-story back building. It is an old building. It has in the main building 2,185 feet of room-space available for office purposes, and the back building is divided into small rooms which would be of little use as offices.

Building No. 708 E street (No. 4) is a very old building without back building, the basement of which is now being reconstructed. It contains three rooms well adapted for office purposes, containing 1,072 superficial feet. It contains, in addition, 1,568 feet of room-space which would be available for office purposes. It also has three attic rooms and five rooms in the basement, two of which would answer for office purposes. The building is now undergoing repair, and when completed, will be provided with a furnace, hot and cold water, and gas. It could be made available for a small division of clerks, but contains less office room than any of the buildings offered.

Building No. 618 F street (No. 5) is a well-constructed four-story brick building, with two-story back building. It contains in the main building 2,220 feet of room-space available for office purposes, excepting that the ceiling of the fourth floor is rather low. It also has in the back building a room suitable for an office, containing 325 superficial feet of space; in addition to which
18 the back building contains four small rooms. This building has a good dry cellar, in which is a furnace, which heats the first floor and halls of the main building. It is also well supplied with water, has gas-fixtures in every room, and is in perfect order throughout, all the walls and ceilings being either painted or papered. The house is in excellent condition.

Building No. 915 E street (No. 6) is a large, substantially-constructed and comparatively-new brick building. It has four stories in the main building and three stories in the back building, with cellars under both. The building is now unoccupied, is in thorough repair throughout, and ready for immediate occupancy. It has water-pipes on each floor and gas-fixtures in every room, and the greater part of the building is heated by a furnace. Superficial feet of available room-space for offices in the main building, 2,304; in back building, 1,240; in addition to which are bath rooms, water closets, kitchen, and cellars. The hall is six feet wide, the ceilings high, and the rooms well lighted. This building we consider the

best adapted for office purposes, for the reason that the back building is separated from the main building by an area and brick-covered hallway, which admits two rear windows to each floor, thus admitting to the main building more light and air from the rear than either of the other premises which have a back building afford.

We inclose a proposal of A. L. Barber & Co., to rent the building on Eighth street, known as the Waverly House, which offer, Mr. Barber informed us, is withdrawn, as the house has been rented to private parties.

We express no opinion upon the eligibility of the location of these buildings, nor upon the rent asked for the same.

Respectfully submitted,

A. G. MILLS, *Chief Clerk.*
W. T. DEWDNEY,
Assistant Superintendent, State Department.

19 B 5.

Supplemental report of the Chief Clerk and Assistant Superintendent, State Department, on buildings.

TREASURY DEPARTMENT,
OFFICE OF SUPERVISING ARCHITECT, *May* 28, 1873.

SIR: Respectfully referring to our report of the 26th instant, we have, in accordance with your instructions, examined building No. 913 E street, which was offered since our report was made, and find that it is a four-story brick building, with no back building, and that it is of ordinary construction, the rear wall being cracked in several places. For want of proper care in building the dampness has extended from the basement to the entrance floor, where it is plainly marked on the walls. The house faces south, and from its situation admits of a free current of air. It contains 2,331 superficial feet of room-space suitable for office purposes, except that the ceiling of the fourth floor is low.

Respectfully submitted,

A. G. MILLS, *Chief Clerk.*
WM. T. DEWDNEY,
Assistant Superintendent, State Department.

A. B. MULLETT,
Supervising Architect, Treasury Department.

B 6.

Proposal for rent of premises Nos. 1000, 1002, *and* 1004 *F street.*

WASHINGTON, D. C., *May* 23, 1873.

DEAR SIR: The undersigned, proprietors of premises Nos. 1000, 1002, and 1004 F street, offer the same, exclusive of the two stores, to the Post Office Department, for a term of three or more years, at the annual rental of $3,600.

These premises include two buildings, extending from the corner of Tenth street along the line of F street, and fronting north about 72 feet.

The corner house, No. 1000, including the third story of
20 Nos. 1002 and 1004, with which it communicates, contains nineteen rooms, most of which are large, with high ceilings, well lighted and ventilated.

The second building includes Nos. 1002 and 1004, is entirely disconnected with the corner house except in the third story, and contains a large hall, 35 feet deep, by 45 feet on F street, with a 20-feet ceiling, and lighted by five high windows fronting north. From this hall two rooms open, averaging about 18 feet by 25 feet. There is a large basement room arranged for fuel.

These buildings adjoin but one other only, to wit, on the west, which separates them from the alley. There is considerable yard-room, having two outlets, one on Tenth street, and the other in the alley on the west.

For further information apply to Dr. W. P. Johnston, No. 1307 F street.

Very respectfully, your obedient servants,

W. P. JOHNSTON, M. D.
C. H. LIEBEROSEAEN.

Hon. J. A. J. CRESWELL,
Postmaster-General

B 7.

Proposal for rent of premises No. 809 E street.

WASHINGTON, D. C., *May* 21, 1873.

SIR: Understanding from what seems reliable authority that your department is in need of more room to accommodate the clerical force in certain branches of its department, I take the liberty of calling your attention to a large building owned by me at No. 809 E street, between Eighth and Ninth streets northwest.

The building is quite new, and is over 27 feet front by 87 or 90 feet deep, is four stories high, with an attic, and contains 22 or 23 rooms in all, five water-closets, and a fine bath-room, and one of the finest operating furnaces in the basement cellar probably in the city; and its convenient location and proximity to the General Post Office building is too obvious to require comment.

Should you be of opinion, after inspection, that the build-
21 ing will suit your purpose, the rent can be fixed on a basis satisfactory to all.

I have the honor to be, very respectfully,

F. B. CULVER.

Hon. J. A. J. CRESWELL,
Postmaster-General.

B 8.

Proposal for rent of premises No. 508 Ninth street.

WASHINGTON, *May* 26, 1873.

SIR: I hereby offer to the government for rent my house, No. 508 Ninth street northwest, brick building, four stories high, 26 feet front by 40 feet deep, with back building.

The building was two years ago occupied by the pension office, and found to possess all the essential requisites of light, ventilation, and large rooms, for a government office, and for which I am informed the government paid twenty-five hundred dollars per year. The property is now estimated at from twenty to twenty-five thousand dollars in value, and I consider that twenty-two hundred dollars per year would be a fair rent, in view of the purpose for which it was to be used; but am willing, if that price is objected to, to take $2,000 per annum for it.

Very respectfully, &c., A. Y. P. GARNETT.

A. B. MULLETT, Esq.

TREASURY DEPARTMENT, *May* 26, 1873.

MY DEAR SECRETARY: If Dr. Garnett's house will *as well* answer your purpose as any other offered, *and serve the public interest as well*, I should be personally gratified if it could be selected.

Excuse my troubling you about the matter.

Faithfully yours, FREDERICK A. SAWYER.

TREASURY DEPARTMENT, *May* 24, 1873.

MY DEAR MR. CRESWELL: The bearer, Dr. Garnett, is a
22 personal friend of mine. He has a house he wishes to rent for post-office purposes. If it will answer the ends you have in view, I should feel gratified to know that he had succeeded in leasing it to the government at an equitable rate.

Very respectfully, FREDERICK A. SAWYER.

NOTE.—Dr. Garnett proposes to rent house 508 Ninth street to the department, at one time occupied by pension bureau.

B 9.

Proposal for rent of premises No 708 E street.

WASHINGTON, D. C., *May* 17, 1873.

SIR: Referring to our conversation this morning, allow us to say that we will rent the entire premises, No. 708 E street, to the United States for five years, at the rate of $350 per month, and will complete all the improvements now in progress, and make modifications in the same to suit the purposes of the department, giving sixteen offices and five rooms, in complete finish and order, with furnace, hot and cold water, and washstands, &c. We will also give the de-

partment the privilege of renewing the rent of said premises for a second period of five years, at the rate of $400 per month.

Also, if the department desires to have a 12-foot French roof put on and completed in good style, at any time during the term of rent or lease, we will do the same for an additional price of $50 per month, thus giving three more offices.

We desire an answer to this on or before the 20th instant.

We are, sir, yours, very respectfully,

A. L. BARBER & CO.

Hon. J. L. ROUTT,
Second Assistant Postmaster-General.

B 10.

Proposal for rent of premises No. 618 F street.

23 SIR: The premises No. 618 F street (square 456) is the centre house and lot of the square immediately east of the east front of the Post Office Department.

The *alley* entrance to the lot is midway between Seventh and Sixth streets; alley 30 feet wide and paved, and the best alley in the city. On this alley, adjoining (nearly) my premises, are the stables just rented by the Department of the Interior.

The dwelling is four stories, with two-story back building. The basement has new furnace, which heats the parlor and dining-room and passages, and is perfectly dry-paved with brick, with front entrance on F street, and bells, &c.

First story.—Hall, front room, (saloon style for parlor,) 19 by 40; next room in rear is 16 by 30; next room 20 by 20; next room 12 by 15 (laundry); next comes the back yard, the width of lot, and 40 feet depth to stables. Then the stable, concreted and rat-proof, with accommodations complete for two horses, with hydrant and carriage-room for one carriage and buggy, and servant's room above.

Second story.—Two large rooms and one passage-room in front building, with one small room, 10 by 12; one bathing-room, &c., 9 by 12, and one large room in rear, with porch, between ornamented grounds on either side.

Third story.—Main building, two large rooms, and one passage-room.

Fourth story.—Main building, two large rooms, and one passage-room.

In all, there are fourteen available rooms, besides bathing-room, laundry, water-closet, and stationary closets; also, water-closet in yard, with hydrant water. Ten of these rooms are large; four of them are average-sized small rooms.

The water from the house and the surface-water is carried off in an underground sewer, with *water trap* for all points of discharge of water. No gases from sewer can enter the premises.

Water and gas throughout main and back buildings, stationary washstands, &c. Premises newly papered, grained, and painted. Chandelier in parlor room, eight burners, glass, and four other burners, and full supply of gas-burners throughout house.

I will rent the premises to the government for three or more years at $3,000 per year, payable $250 monthly.

24 The premises are one and a half or two minutes' walk from your department.

Respectfully, DEWITT C. LAWRENCE,
Of MASON, FENWICK & LAWRENCE,
Northeast corner 7th and F streets.

Hon. POSTMASTER-GENERAL.

NOTE.—Paved cellar under whole of the main building

B 11.

Proposal for rent of premises No. 915 E street.

WASHINGTON D. C., *May* 22, 1873.

DEAR SIR: I have the honor to submit the following proposition regarding house No. 915 E street: I propose to rent it for five years, or ten, if desired, for $400 per month. This house contains twenty-two rooms, has been recently repaired, and is fitted up in elegant style. It is complete in all its appointments. I do not think the department can obtain as suitable a building in the city for the accommodation of a clerical force. The key is at my office, and I will be glad to show you the premises at any time.

Yours, truly, B. H. WARNER.

Hon. JOHN A. J. CRESWELL, *Postmaster-General.*

B 12.

Proposal for rent of premises No. 913 E street.

WASHINGTON, D. C., *May* 26, 1873.

SIR: I desire to lease to the government my house, No. 913 E street northwest, for government use, for the sum of $1,800 per annum.

The house is four stories high, 25 feet front, and 44 feet deep, and contains thirteen rooms

Very respectfully, MRS. A. SARGENT,
No. 926 E street northwest.

Hon. A. B. MULLETT,
Architect United States Treasury.

25 B 13.

Proposal for rent of May Building, Seventh and E streets.

WASHINGTON, D. C., *May* 28, 1873.

SIR: I will rent the *three* stories in May Building (stores not included) for $6,480, or I will rent the second and third stories for

$3,000 *per annum*. In case it is decided to take the second and third stories *alone* I reserve one of the smaller rooms in the third story for some articles I have stored there.

Very respectfully,

JOHN FRED'K MAY.

A. B. MULLETT, Esq.

B 14.

Lease of premises No. 915 E street.

This indenture, made this 6th day of June, in the year 1873, by and between Andrew C. Bradley, of Washington, D. C., of the first part, and John A. J. Creswell, Postmaster-General, for and in behalf of the United States of America, of the second part, witnesseth:

That said party of the first part, for and in consideration of the rents, covenants, and agreements to be paid, kept, and performed by the party of the second part, doth hereby demise and lease unto the said party of the second part, those certain premises, with the four-story brick house and brick stable thereon, situated on the north side of E street, between Ninth and Tenth streets, in the city of Washington, in the District of Columbia, and known as house numbered 915 on said E street northwest, to have and to hold to the party of the second part for the term of three years from and after the 5th day of June, anno domini 1873, with the privilege to the said party of the second part of a renewal of the said term for the further period of two years; the said party of the second part yielding and paying therefor the annual rent during the said term and subsequent renewal thereof as aforesaid, of four thousand two hundred dollars ($4,200), payable quarterly on the 30th day of September, the 31st day of December, the 31st day of March, and on the 30th day of June.

26 And it is hereby mutually understood and agreed, by and between the parties hereto, that this lease is made subject to an appropriation by Congress, for the payment of the rental herein stipulated for, and that no payment shall be made to said party of the first part on account of such rental until such appropriation shall be available, and that as soon as practicable after such appropriation shall become available, the arrears of the rent then due shall be paid in full, and thereafter payment shall be made at the times and in the manner hereinbefore stipulated.

And it is hereby agreed by said party of the first part that he will, at his own expense, remove such partitions, and construct such partitions, with necessary doorways and doors in said building, and construct such water-closets with the necessary water connections as may be required by the supervising architect of the Treasury Department, and that he will leave in good order all gas-fixtures now in said building for the use of the said party of the second part; and the party of the second part will keep the said premises in good re-

pair during the continuance of this lease and any renewed term thereof, and the expenses of any alterations of or additions to the interior, not herein otherwise provided for, so as to adapt it to the use of the United States, and not calculated to damage the premises, are to be borne by the party of the second part, and all taxes and assessments legally levied or charged upon the property are to be paid by the party of the first part.

And it is hereby further provided that in case the premises, or any part thereof, during said term, or the renewal thereof, be destroyed or injured by fire or other unavoidable casualty, so that the same shall be thereby rendered unfit for use, then the rent hereinbefore reserved, or a just and proportionate part thereof, according to the extent and nature of the injury sustained, shall be suspended or abated until the said premises shall have been put in proper condition for use by and at the expense of the said party of the first part; and the said party of the second part covenants to deliver up the said premises to the party of the first part at the determination of this lease, or at the end of any renewal of the term thereof, in good order and condition, reasonable wear and use thereof and injury by unavoidable fire or other casuality excepted.

27 And it is further stipulated that the party of the second part may, at or before the delivery of the premises aforesaid, remove such additions to or improvements of the same, placed on the premises by the said party of the second part, the removal of which, as aforesaid, will not injure the premises, as he, the said party of the second part, may elect so to do.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

A. C. BRADLEY. [SEAL.]
JNO. A. J. CRESWELL, [SEAL.]
Postmaster-General.

Signed, sealed, and delivered in presence of—
T. A. SPENCE.
A. G. MILLS.

C.

Letter of C. Cochran, Jr., relative to amounts due to special agents.

P. O. DEPARTMENT, OFFICE CHIEF OF DIVISION
SPECIAL AGENTS AND MAIL DEPREDATIONS,
WASHINGTON, *December* 5, 1873.

SIR: I beg leave respectfully to represent that a balance of $2,101.87 is due to special agents of this department for the month of June, 1872, the appropriation of $125,000 for the fiscal year ending June 30, 1872, having been exhausted before the accounts for that month were all brought in, and the auditor for this department did not feel authorized to pay the amount out of the appro-

priations for the following year, of which there was a balance left, viz., $1,916.98, almost enough to pay the amount required.

It is therefore desired that an appropriation for the amount above named, $2,101.87, be asked for to discharge the following obligations of the department to the several special agents named for services actually rendered and unpaid for the month of June, 1872, viz:

J. B. Underwood	$365	50
J. H. Wickizer	237	87
William Maxwell	248	65
J. T. Williams	240	97
W. H. Parker	233	37
28 J. B. Furay	305	27
C. B. Gould	221	87
J. T. Callahan	248	37
	2,101	87

While the department makes its estimates as nearly as possible for its necessary requirements, there will occasionally be a deficiency or a surplus, as in the years ending June 30, 1872, and June 30, 1873. Very respectfully, your obedient servant,

C. COCHRAN, JR.,
Chief of Division.

Hon. J. A. J. CRESWELL,
Postmaster-General.

A. R. S.—Exhibits Nos. 2 and 3—Henry R. Elliott, Com'r.

WASHINGTON, D. C., *June* 30, 1874.

POST OFFICE DEPARTMENT

To A. C. BRADLEY, Dr.

To rent of house No. 915 E street N. W. for use of Post Office Department from June 6, 1873, to June 30, 1874 ..... $4,480 86

Act making appropriations to supply deficiencies in the appropriations for the service of the government for the fiscal years ending June 30, 1873 and 1874.

Received from G. D. Chenoweth, disbursing clerk for the Post Office Department, forty-four hundred and eighty $\frac{86}{100}$ dollars, in full for the above account.

(Signed) A. C. BRADLEY.

[Signed duplicates.]

Paid by check No. 1056, dated June 30, 1874.

[Endorsed.]

A. C. Bradley, June 30, 1874; rent, $4,480.86.

Approved:

(Signed) J. W. MARSHALL,
Postmaster-General.

August 11, 1874.

29 Court of Claims. No. 11,456.

Andrew C. Bradley, to the use of Alexander R. Shepherd, to the use of George Taylor, Samuel Cross, and Peter F. Bacon.

Your petitioners, Andrew C. Bradley and Alexander R. Shepherd, and George Taylor, Samuel Cross, and Peter F. Bacon, trustees, citizens of the United States, and residing and domiciled in the city of Washington, District of Columbia, respectfully represent—

I. That after filing the original petition in this case, Henry A. Willard, one of the parties thereto, and named a trustee in the deed of trust executed by the said Alexander R. Shepherd, as recited in said petition, declined to accept said trust and to act as such trustee; and the said Peter F. Bacon was, under and in pursuance of the terms of said deed, appointed in his place and stead as trustee, and duly accepted said trust.

II. That the said Peter F. Bacon is a citizen of the United States, and has at all times borne true allegiance to the government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the government of the United States; and that the facts herein stated are true.

A. C. BRADLEY.
ALEX. R. SHEPHERD.
GEORGE TAYLOR.
SAMUEL CROSS.
PETER F. BACON.

30 DISTRICT OF COLUMBIA, *ss.*

Be it remembered, that on this 15th day of March, 1877, before the subscriber, a United States commissioner for the district aforesaid, personally appeared Andrew C. Bradley, who, being first duly sworn, deposes and says that he has carefully read the foregoing petition by him subscribed, and knows the contents thereof, and that the facts therein stated are true, to the best of his knowledge and belief.

A. C. BRADLEY.

Sworn and subscribed before me, March 15, 1877.

R. J. MEIGS, *Clerk*,
[L. S.] By R. J. MEIGS, JR., *Asst. Clerk.*

United States Court of Claims. No. 11,456.

ANDREW C. BRADLEY ET AL.
v.
THE UNITED STATES OF AMERICA.

To the Honorable the Judges of the Court of Claims:

The claimants, by their attorney, Nathaniel Wilson, move to amend the original petition filed herein, by substituting for Henry A. Willard, who has, since the date of filing said petition, declined

said trust, Peter F. Bacon, who has been duly appointed a trustee in the place of said Henry A. Willard, and for leave to file the petition hereto annexed as a correction and amendment of said original petition.

NATHANIEL WILSON,
Attorney for Claimants.

31 *Traverse. Filed Feb.* 20, 1877.

And now comes the Attorney-General, on behalf of the United States, and makes answer to the petition of the claimants herein; and not confessing the same, or any part thereof, denies each and every the allegations therein contained, and calls for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the United States are indebted to the said claimants in the sum of four thousand two hundred dollars, says that they are not indebted to the said claimants in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimants have at all times borne true faith and allegiance to the government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said government, denies the said allegation.

THOMAS SIMONS,
Assistant Attorney-General.

32 Court of Claims.—No. 11,456.

ANDREW C. BRADLEY, TO THE USE OF ALEXANDER R. Shepherd, to the use of George Taylor, Peter F. Bacon, and Samuel Cross,
vs.
THE UNITED STATES.

Findings of Fact.

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I. On the 6th of June, A. D. 1873, the Postmaster-General and the claimant, Bradley, made and executed an indenture, of which the following is a copy:

"This indenture, made this sixth day of June, in the year one thousand eight hundred and seventy-three, by and between Andrew C. Bradley, of Washington, D. C., of the first part, and John A. J. Creswell, Postmaster-General, for and in behalf of the United States of America, of the second part, witnesseth: That the said party of the first part, for and in consideration of the rents, covenants, and agreements to be paid, kept, and performed by the party of the second part, doth hereby demise and lease unto the said party of the

second part, those certain premises, with the four-story brick house and brick stable thereon, situated on the north side of E street, between 9th and 10th streets, in the city of Washington, in the District of Columbia, and known as house numbered 915 on said E street northwest, to have and to hold to the party of the second part, for the term of three years from and after the 5th day of June, Anno Domini one thousand eight hundred and seventy-three, with the privilege to the said party of the second part of a renewal of the said term for the further period of two years.

"The said party of the second part yielding and paying therefor the annual rent, during the said term and a subsequent renewal thereof, as aforesaid, of four thousand two hundred dollars ($4,200), payable quarterly, on the 30th day of September, the 31st day of December, the 31st day of March, and the 30th day of June.

"And it is hereby mutually understood and agreed, by and between the parties hereto, that this lease is made subject to an appropriation by Congress for the payment of the rental herein stipulated for, and that no payment shall be made to said party of the first part on account of such rental until such appropriation shall be available, and that as soon as practicable after such appropriation shall become available the arrears of the rent then due shall be paid in full, and thereafter payment shall be made at the times and in the manner hereinbefore stipulated.

"And it is hereby agreed by said party of the first part that he will, at his own expense, remove such partitions and construct such partitions, with necessary doorways and doors, in said building, and construct such water-closets, with the necessary water con-
33 nections, as may be required by the supervising architect of the Treasury Department, and that he will leave in good order all gas-fixtures now in said building for the use of the said party of the second part; and the party of the second part will keep the said premises in good repair during the continuance of this lease and any renewed term thereof, and the expenses of any alterations of or additions to the interior, not herein otherwise provided for, so as to adapt it to the use of the United States, and not calculated to damage the premises, are to be borne by the party of the second part, and all taxes and assessments legally levied or charged upon the property are to be paid by the party of the first part.

"And it is hereby further provided that in case the premises, or any part thereof, during said term, or the renewal thereof, be destroyed or injured by fire or other unavoidable casualty, so that the same shall be thereby rendered unfit for use, then the rent hereinbefore reserved, or a just and proportionable part thereof, according to the extent and nature of the injury sustained, shall be suspended or abated until the said premises shall have been put in proper condition for use by and at the expense of the said party of the first part; and the said party of the second part covenants to deliver up the said premises to the party of the first part at the determination of

this lease, or at the end of any renewal of the term thereof, in good order and condition, reasonable wear and use thereof and injury by unavoidable fire or other casualty excepted.

"And it is further stipulated that the party of the second part may, at or before the delivery of the premises aforesaid, remove such additions to or improvements of the same, placed on the premises by the said party of the second part, the removal of which, as aforesaid, will not injure the premises, as he, the said party of the second part, may elect so to do.

"In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

"A. C. BRADLEY. [SEAL.]
"JNO. A. J. CRESWELL, [SEAL.]
"*Postmaster-General.*

"Signed, sealed, and delivered in presence of—
"T. A. SPENCE.
"A. G. MILLS."

II. The premises described in said indenture were sold and conveyed, and the lease was assigned by said Bradley to Alexander R. Shepherd, and by him conveyed and assigned to George Taylor, Samuel Cross, and Peter F. Bacon, as alleged in the petition and in the amendment thereof.

III. Said premises were used and occupied for the uses and purposes of the Post Office Department, and for the benefit of the United States, under the direction of the Postmaster-General, from the time of executing said indenture until and including June 30, 1876, as well as subsequently thereto.

IV. The claimants have been paid the rent of said premises, through special appropriations of Congress, up to and including June 30, 1875, but have been paid nothing for the year ending June 30, 1876.

V. It does not appear that demand has ever been made upon the Postmaster-General on the part of the claimants for delivery up of the possession of the premises.

34 *Conclusion of Law.*

On the foregoing facts and the statutes in relation thereto, the claimants are entitled to recover the sum of $1,800.

RICHARDSON, J., delivered the opinion of the court:

On the 6th of June, 1873, Andrew C. Bradley entered into and executed an indenture with the Postmaster-General, leasing to the United States for the uses of the Post Office Department certain premises in Washington, designated as "house No. 915 E street northwest," for three years from June 5, 1873, with the privilege of renewal for two years, at an annual rental of $4,200, payable quarterly, on the first day of September, December, March, and June in each

year, and the Postmaster-General took immediate possession, and has ever since used the same for the purposes of his department.

Among the agreements therein is the following:

"And it is hereby mutually understood and agreed, by and between the parties hereto, that this lease is made subject to an appropriation by Congress for the payment of the rental herein stipulated for, and that no payment shall be made to said party of the first part on account of such rental until such appropriation shall be available, and that, as soon as practicable after such appropriation shall become available, the arrears of the rent then due shall be paid in full, and thereafter payment shall be made at the times and in the manner hereinbefore stipulated."

At the time this lease was made the following provisions of statute law were in force:

"It shall not be lawful for any department of the government to expend in any one fiscal year any sum in excess of appropriations made by Congress for that fiscal year, or to involve the government in any contract for the future payment of money in excess of such appropriations."—(*Act of July* 12, 1870, *ch.* 251, § 7, 16 *Stat.*, 251, *now Revised Statutes*, § 3,679.)

"No contract or purchase shall hereafter be made, unless the same be authorized by law or be under an appropriation adequate to its fulfillment, except in the War and Navy Departments, for clothing, subsistence, forage, fuel, quarters, or transportation, which, however, shall not exceed the necessities of the current year."—(*Act of March* 2, 1861, *ch.* 84, § 10, 12 *Stat.*, 220, *now Revised Statutes*, § 3,732.)

In view of these stringent provisions, if not from the language of the lease itself, we are of opinion that in entering into this contract the Postmaster-General, with great caution and prudence, had the clause above referred to inserted for the very purpose of not involving or seeming to involve the United States in any liability beyond the will of Congress to be directly expressed thereon, and of having the payment of rent depend wholly upon appropriations therefor by the legislative branch of the government, and that such purpose was fully accomplished by the terms of the agreement to which the parties assented.

The claimant alleges that Congress, by its subsequent action, has committed the defendants to the payment of rent, at $4,200 a year, for the whole term of three years therein specified, and that they are liable for that amount each year, whether Congress appropriates the money or not. That such is the legal effect of the statutes upon which the claimants rely we cannot agree.

In the act of June 20, 1874, ch. 328 (18 Stat., 107), making appropriations for expenses of the government for the year
35 ending June 30, 1875, there is an appropriation "for rent of house numbered 915 E street northwest, $4,200;" and in the deficiency appropriation act of June 22, 1874 (18 Stat., 144), is the following clause:

"For rent of house numbered nine hundred and fifteen E street northwest, for further accommodation of the clerical force of the department, from June sixth, eighteen hundred and seventy-three, to June thirtieth, eighteen hundred and seventy-four, four thousand four hundred and eighty-eight dollars and eighty-six cents; and hereafter no contract shall be made for the rent of any building or part of any building in Washington, not now in use by the government, to be used for the purpose of the government, until an appropriation therefor shall have been made in terms by Congress."

By these two acts Congress made available appropriations for the payment of rent to the end of the second year of the lease, in accordance with the terms of the contract, making the payment subject to such action; but this cannot be held to be an agreement on the part of Congress that it would appropriate $4,200 for the next year, nor that the defendants should be liable for the rent for that year whether an appropriation should be made or not, nor do those acts constitute a waiver in any particular of the provision that the lease is made "subject to an appropriation by Congress for the payment of the rental therein stipulated for, and that no payment shall be made to said party of the first part on account of such rental until such appropriation shall be available," as it is, in effect, alleged by the claimants.

And the clause which prohibits for the future any contract for the rent of any building in Washington, not then used for the purposes of the government, until an appropriation therefor shall have been made in terms by Congress, does not carry with it the slightest implication that the defendants were bound in that or any other such conditional contract beyond the amount appropriated.

Both of the above-named sums were paid according to the terms of the appropriations, and no controversy arises thereon.

Then came the act of March 3, 1875, ch. 129 (18 Stat., 367), with this clause inserted therein:

"For rent of house numbered nine hundred and fifteen E street northwest, eighteen hundred dollars: *Provided*, That the above sum shall not be deemed to be paid on account of any lease for years of said building: *Provided, however*, That at the end of the present fiscal year the Postmaster-General be directed, upon the demand of the lessor, to deliver up the possession of said premises."

Thereby Congress determined to permit the Postmaster-General to continue in possession of the premises another year only on condition that the rent should be $1,800; for which an appropriation was made. This was more than three months before the year was to commence, and notice was thereby given to the lessor substantially that upon demand made upon the Postmaster-General, possession of the property should be delivered up, or the defendants would continue in possession at the rent specified, at the option of the claimants.

No demand for the redelivery of the premises having been made, the claimants must now be held to have assented to the terms of-

fered by Congress for the rent of the premises for the year ending June 30, 1876.

It will be observed that the Postmaster-General did not make an agreement for the payment of a fixed rental for three years, and submit that agreement to Congress for ratification. What was submitted to Congress by the parties was the right to make or refuse appropriations, which are well known to be annual and not
36 for three years at one time; and it was expressly stipulated, as we have before shown, that no rent should be paid until an appropriation should be available. This is quite a different condition from that which is assumed and relied upon in the argument as having been created by the contract and subsequently complied with, a condition of approval or ratification by Congress, which, when once performed, would render the defendants liable for the whole term of three years. The question of ratification of the lease is really not involved in the case, because even if it were ratified, the fact still remains that the very terms of the instrument are that Congress shall first make an appropriation before any rent is payable, and those terms would not be annulled or altered, but would be adopted by a ratification of the lease, and would continue in force as a condition precedent to the claimants' right of recovery.

The facts do not present a case of implied contract to pay the rentable value of the property for use and occupation, nor a case of hardship which might have existed if the claimants' property had been retained until the expiration of the third year before the determination of Congress to appropriate less than the lease specified was made known, for the claimants were duly and reasonably notified by a public act several months before the third year commenced of the amount it had appropriated and would pay; and thus Congress did more for the claimants' interest than it was called upon to do by the agreement in offering to surrender the premises if the lessor was not content with the amount thus made available for the payment of rent.

In the case of *Churchward* vs. *The Queen* (1 Law Reports, Queen's Bench, 1865, p. 199), which was a petition of right against the Crown, upon a contract made by the Commissioners of Admiralty, wherein for the performance of certain service they agreed to pay "a sum of money to be provided by Parliament, after the rate of £18,000 per annum, by quarterly payments," the court held that the liability for payment depended upon Parliament first providing the money. The language of Chief Justice Cockburn, in giving his opinion, is singularly applicable to the points involved in this case. He says: "We start with this, that there is involved in this contract the possibility of Parliament refusing to find the fund. The commissioners do not make themselves, nor their department, nor the Crown answerable for a default in the payment of the £18,000 a year to the contractor. It is left to Parliament to find the funds, and in that is necessarily involved the possibility of Parliament in

the exercise of its absolute power refusing to do so; and in point of fact we cannot shut our eyes to the fact, because I think it sufficiently appears from this record and the acts of Parliament referred to, that Parliament has refused to find the funds."

In the case at bar Congress has refused to furnish the necessary funds to pay the $4,200 demanded, but has appropriated $1,800, and to that extent the claimants are entitled to recover, and judgment will be entered in their favor for that amount.

NOTT, J., dissenting:

In *Roberts' Case* (11 C. Cls. R., 98), the agreement was that the claimants' services should be rendered subject to the ratification of Congress, and that they should not be a matter of expense to the Post Office Department. In this case the contract in like manner provided that the claimants' lease should be subject to the ratification of Congress, and with like effect that no payment of rent should be made until Congress provided the means. In Roberts' case Congress never in terms ratified the transaction, but
37 the Supreme Court held that the reference of the claim to this court by Congress, inasmuch as the claimant should recover *ex æquo et bono*, was in effect a ratification. In this case Congress have not in express words ratified the lease, and if there had been no express legislative action in regard to it, unquestionably the claimants' case would come under the rule laid down by this court in *Shavor & Corse* (4 C. Cls. R., 440), where it was said under similar conditions, that Congress not having ratified the transaction no legal liability arises and no action lies; or under the rule laid down by the Queen's Bench, in *Churchward* vs. *The Queen* (1 L. R., Q. B., 173), where it was held that if certain commissioners did not make themselves, nor their department, nor the Crown answerable, but left it to Parliament to find the funds, and Parliament "not merely omitted to find a fund applicable to this purpose," but in two successive appropriation acts "cautiously provided for the exclusion" of the claim from general appropriations, there no liability would arise on the contract.

The case therefore depends upon the express or implied ratification of Congress—upon the legislature having done what they neglected to do in the Shavor & Corse case, and what they refused to do in the Churchward case. What then was the action of Congress in regard to this lease?

The government had entered into the occupation and enjoyment of the claimants' premises on the 6th June, 1873, and were in the continued occupation and enjoyment of them, when, at the next session of Congress (June 20 and 22, 1874), two distinct appropriations were made for the rent of the first and second years of the term. The appropriation for the first year was not, in general terms, for such buildings as the Postmaster-General might have rented, but for these specific premises, designating them by the

street and number, and defining the purpose for which they were rented. Neither was it for a greater or less amount, but, on the contrary, it designated the precise amount named in the lease. Attached to the appropriation was a provision that thereafter no building should be rented in Washington for the use of the government "until an appropriation therefor shall have been made in terms by Congress." I do not attach much importance to this provision, but if it has any significance in this case it is that of a legislative declaration that the heads of the executive departments theretofore had had authority to rent buildings for public purposes, and thereafter the power should be taken away.

At substantially the same time that this deficiency bill was passed (June 22, 1874), there was also passed (June 20, 1874) the appropriation act for the ensuing fiscal year, and by that act Congress again appropriated the precise rent of the premises for the second year of the lease. In both statutes the appropriation is declared to be "for rent," and for the rent of these specific premises.

Now it is a familiar principle that the existence of an express, negatives the supposition of an implied contract. The Supreme Court indeed has felt bound to apply this principle even where it worked much hardship and injustice to an innocent party.—(*Gibbons'* and *Carpenter's Cases*, 7 C. Cls. R., 405; 9 *Id.*, 18.) When Congress appropriated money for the "*rent*" of these premises and for the precise rent designated in the written lease under which the government had entered into possession, can it be doubtful either as law or as fact that the rent intended was the rent expressly agreed upon?

Again, it is a familiar principle, where a contract is made by an agent subject to the ratification of his principal, that the principal must either ratify or reject it, and that he can neither ratify
38 it in part nor alter it nor amend it, nor attach conditions to it, nor in any way make a new contract out of it.—(*Whiteside's Case*, 12 C. Cls. R., 10.) Now, in this case the lease was for a definite term of three years, and the ratification of the principal could not have been given for any diminished time. Congress, if they gave any ratification whatever to the instrument, ratified it for the full and entire term which it prescribed. It is impossible to hold upon legal principles that there was a ratification *pro tanto* for one year, and another ratification *pro tanto* for the second year, and that the lease fell for the third year because a third *pro tanto* ratification was not given. It is equally without legal principle to say that the transaction required three ratifications. There was but one lease and but one term; that term was an entirety; Congress as the principal in the transaction could ratify or reject; but a ratification once given was operative for the whole term, and had no more legal efficacy for the first third part of the term than for the last.

The Supreme Court said in the Roberts case: "If this were a controversy between private parties, we do not think that there could

be a particle of doubt that the contractor would be entitled to demand compensation." Much more truly in this case may that remark be repeated. Here the agreement does not float through prolonged correspondence, but is condensed into a formal written instrument. Here the valuable consideration given by the claimant was not a thing of the past at the time when the ratifying statute was enacted, but was still largely *in futuro*, enabling Congress to reject the agreement of their agent without doing grievous wrong to the other contracting party. Here the ratifying statute did not come as a mere act of grace after the service had been voluntarily rendered, but came in the first year of the term and as a legal inducement for the landlord to leave the government in undisturbed enjoyment of the premises. Here the ratifying act is not couched in ambiguous language susceptible of two interpretations, but unequivocally refers to the premises and to the use of them, and to the rent specified in the lease, and moreover is intensified by the fact of payment being expressly authorized. In short, if the language used by Congress and the payments made by authority of Congress do not together constitute a ratification at law, then it is an idle task to apply established legal principles to public contracts, and the reasoning of the Supreme Court in the Roberts case must be set down as fallacious.

If, then, Congress ratified the transaction of the Postmaster-General, and authorized the government to accept the benefits of his agreement, is there anything in the lease which makes the landlord's right to recover his rent contingent upon the subsequent action of his tenants? Assuredly it would be a monstrous paradox to hold that a man leased his premises by a valid agreement for a rent certain, and a term certain, with a condition, nevertheless, by implication or construction, that the rent should be no more than the tenant chose to pay, and the term should cease whenever the tenant chose to put an end to it. The language of the agreement is, "that this lease is made subject to an appropriation by Congress for the payment of the rental herein stipulated for, and that no payment shall be made to said party of the first part on account of such rental until such an appropriation shall be available." If the Postmaster-General had been the principal in the transaction, and Congress a third party, having no direct or beneficial interest in the lease, there would be reason for taking this language in its literal sense, and construing it as a condition precedent to the Postmaster-General's liability for the rent. It would then be the case of a man whose agreement to pay the rent of a building was expressly conditioned upon the happening of some event, over which he had no control, and as to which he was not bound to do anything to bring it about. But here the Postmaster-General was not the principal, and the occupancy of the building was not by him, but by the defendants, that is, the government, under the authority of Congress, and the case is really that of an agent who, having en-

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tered into an agreement in his own name, for the use of his principal, inserts a provision that he shall not be required to pay the rent until he receives funds for that purpose from the party who is to have the real use of and occupation in the premises. If a contrary construction be given to this clause, and it be construed to limit the principal's liability, then clearly two results will follow, each abhorrent to the terms and conditions of the lease, and in conflict with the well-settled rules of construction that govern the relations of landlord and tenant; which results are these: first, that the clause will change the rent certain, expressly reserved as the consideration and condition of the lease, to an uncertain amount arbitrarily within the control of the other contracting party; second, that the tenancy for a term of years expressly defined in the lease will be changed into a tenancy for no term certain, but literally at the will of the tenant. Manifestly, such a construction would rob this written lease of the characteristics which make written instruments valuable in defining and rendering certain the agreements and transactions of men. Manifestly, such is not the construction which a court should give to any instrument. It would be making a minor part greater than the whole, and allowing one party at his option to destroy the expressed consideration for the agreement, and, indeed, reduce it at his pleasure to a *nudum pactum*. Clearly, I think, the object of the Postmaster-General in inserting this provision in the lease was simply that of former Postmasters-General, in *Shavor & Corse* and the *Roberts Cases* (cited *supra*), to declare that the consideration should not be payable out of the ordinary revenues of or general appropriations for his department. It amounted to nothing more at the most than a covenant on the part of the landlord that he would not seek payment from the Postmaster-General out of the ordinary postal revenues in his hands. But it would wholly annul the purpose and conditions and express language of the lease to turn this clause into a covenant that the landlord should seek no more rent for the use and occupation of his premises than the other party might choose to give him.

To render transparent the fallacy of that defence, let us turn the case around and apply to the transaction the test of mutuality. If the action of Congress within the intent of the parties when they made the contract did not amount to a ratification of the lease binding upon the tenants, assuredly it did not amount to a ratification binding upon the landlord. An agreement which binds one party to everything, and the other to nothing, is no agreement in law. Let it be supposed that after Congress had passed the deficiency act, 22d June, 1874, providing for the rent of the current year of the lease, and the appropriation act, 20th June, 1874, providing for the prospective rent of the second year of the lease, the landlord, finding he could lease his building to a third party on better terms, had come into a court and sought to eject the occupants on the ground that Congress had not then made an appropriation for the third

year of the lease. Can there be a doubt that the court would have said to him, "Congress have recognized your lease and accepted it; they have provided for the payment of the precise rent reserved by the lease *et in præsenti et in futuro;* appropriations according to the well-known system and practice of Congress are made from year to year, and do not extend beyond the ensuing fiscal year; Congress have done everything for you that it is usual for them to do for the President in regard to his salary, or for contractors upon the public works whose services extend through a series of years, or for any of the continuing creditors of the government; you knew of this usage when you made your contract, and for you to allege now that you supposed Congress would depart from well-considered precedent and appropriate for your rent in advance of appropriations for all other creditors of the government is preposterous. Your lease has been accepted by Congress; acceptance is at law a ratification; the lease now binds the government and it binds you; you must abide by it. The condition in your lease that rent shall not be paid till money be appropriated to pay it is nothing more than the unwritten condition which the law attaches to all public contracts."

Finally, we may infer that there was need of such a clause in this lease, from the fact that the Post Office is an exception to the great treasury system of the United States, inasmuch as, on the one hand, it collects and disburses immense revenues irrespective of appropriations by Congress, and on the other its disbursements are not under that general supervision which gathers up, sooner or later, all other accounts and disbursements and subjects them to the rigorous test of being allowed or disallowed by the comptrollers of the treasury. The Postmaster-General, unlike the heads of all other executive departments, is his own comptroller. Undoubtedly he is bound to make no payments except in pursuance of law, like other disbursing and administrative officers; but still it is within his power, unlike other disbursing and administrative officers, to pay claims upon his department, and then pass upon the validity of both the account and the payment. If the sixth auditor rejects a claim on the Post Office, the Postmaster-General, like a comptroller of the treasury, can overrule the decision and direct payment of the claim. It was, therefore, eminently proper for him to make the payment of this rent, so far as his official duty was to be concerned, dependent upon the specific appropriations of Congress; and the propriety of his so doing only renders it clearer that the clause in question was intended to regulate his administrative action, and that the covenants which fixed the tenure of the lease and the rent to be paid were intended to define the legal rights of the parties. It is with the legal rights of parties that courts must deal. I am, therefore, of the opinion that the lease is valid, and that the claimant should recover upon it $4,200. The judgment now rendered, as I understand it, is not upon the lease, but upon the act of Congress, which appropriates

$1,800 for rent, but prescribes that "the above sum shall not be deemed to be paid on account of any lease for years of said building."—(*Act 3d March*, 1875, 18 Stat. at L., 367.)

41 *Final Judgment.*

At a Court of Claims held at the Capitol in the city of Washington, eleventh day of March, A. D. 1878, judgment was orderd to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimants, and do order, adjudge, and decree that the said Andrew C. Bradley, to the use of Alexander R. Shepherd, to the use of Geo. Taylor, Samuel Cross, and Peter F. Bacon, do have and recover of and from the United States the sum of eighteen hundred dollars.

42 *Application for Appeal and order allowing same.*

From the judgment rendered in the above-entitled cause on 11th day of March, 1878, in favor of claimants, the claimants, by their counsel, on the 20th day of May, 1878, make application for, and give notice of, an appeal to the Supreme Court of the United States.

NATHANIEL WILSON,
Attorney for the Claimants.

Filed May 20th, 1878.

Ordered that the appeal be allowed as prayed for.

43 In the Court of Claims.

ANDREW C. BRADLEY, TO THE USE OF ALEXANDER R. Shepherd, to the use of George Taylor, Samuel Cross, and Peter F. Bacon,
vs.
THE UNITED STATES. } No. 11,456.

I, Archibald Hopkins, Chief Clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, and the final judgment of the court thereon, of the application of the claimants for the allowance of an appeal as filed in the clerk's office May 20, 1878, and of the order of the said Court of Claims allowing the same.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Washington, this 6th day of July, 1878.

[SEAL.]

ARCHIBALD HOPKINS,
Chief Clerk Court of Claims.

(Endorsed on cover:) Court of Claims. No. 775. Andrew C. Bradley, to the use of Alexander R. Shepherd, to the use of George Taylor, Samuel Cross, and Peter F. Bacon, appellants, vs. The United States. Filed 17th September, 1878.

Supreme Court of the United States.

No. 775.—October Term, 1878.

ANDREW C. BRADLEY, to the use of ALEXANDER R. SHEPHERD, to the use of GEORGE TAYLOR, SAMUEL CROSS, and PETER F. BACON, Trustees, Appellants,

vs.

THE UNITED STATES.

ON APPEAL FROM THE COURT OF CLAIMS.

To be submitted under Rule 20.

BRIEF FOR APPELLANTS.

J. HUBLEY ASHTON,
NATH'L WILSON,
Of Counsel for Appellants.

Joseph L. Pearson, Printer, 9th and D streets, Washington.

Supreme Court of the United States.

No. 775.—October Term, 1878.

Andrew C. Bradley, to the use of Alexander R. Shepherd, to the use of George Taylor, Samuel Cross, and Peter F. Bacon, Trustees, Appellants,

vs.

The United States.

ON APPEAL FROM THE COURT OF CLAIMS.

To be submitted under Rule 20.

BRIEF FOR APPELLANTS.

Assignment of Errors.

The appeal in this case is taken to review the judgment of the Court of Claims in the suit instituted by the appellants to recover the sum of $4,200 rent claimed to be due from the United States for the premises No. 915 E street, in Washington city, for the year ending June 30, 1876.

The errors of which the appellants complain relate to the interpretation given by the Court of Claims to the instrument of writing set forth in the findings of fact, and to provisions contained in two acts of Congress, which are also referred to in the findings of fact.

Statement.

It appears from the findings of fact that on the 6th day of June, 1873, an indenture of lease was entered into between the Postmaster-General, on behalf of the United

States, whereby the petitioner, Andrew C. Bradley, "in consideration of the rents, covenants, and agreements in said lease specified," *demised* and *leased* unto the United States the premises described in the petition, *for the term of three years from and after June* 5, 1873, with the privilege to the United States of a renewal of the term for the further period of two years, *at and for the annual rent during the said term, and a subsequent renewal thereof, of* $4,200, payable quarterly, on the 30th day of September, the 31st day of December, the 31st day of March, and the 30th day of June.

Record, p. 22.

The United States entered the premises demised under the terms of the lease, and maintained possession thereof during the whole period for which rent is claimed.

In December, 1873, the Postmaster-General sent a communication to Congress, transmitting the lease and other papers, and requested an appropriation of the sum of $4,488.46 for the rent of the leased premises for the period intervening between June 6, 1873, and June 30, 1874, and that the sum of $4,200 should be added to the estimate for the contingent expenses of the Post Office Department for the year ending June 30, 1875, for the rent of the premises for that year.

Record, p. 5.

The act making appropriations for the legislative, executive, and judicial expenses of the government for the year ending June 30, 1875, appropriated $4,200 "for *rent* of house numbered nine hundred and fifteen E street northwest."

18 Stats. at Large, p. 107.

The deficiency bill for the year ending June 30, 1874, contained the following provision:

"For rent of house numbered nine hundred and fifteen E street northwest, for further accommodation of the clerical force of the department, from June sixth, eighteen hun-

dred and seventy-three, to June thirtieth, eighteen hundred and seventy-four, four thousand four hundred and eighty-eight dollars and eighty-six cents, and hereafter no contract shall be made for the rent of any building, or part of any building in Washington, not now in use by the government, to be used for the purpose of the government, until an appropriation therefor shall have been made in terms by Congress."

18 Stats. at Large, p. 144.

In pursuance of these enactments the rent due for the first and second years of the term of the lease was paid.

The payment of the rent due for the third year of the term, the year ending June 30, 1876, was refused because of the following provision in the appropriation act of March 3, 1875, making appropriations for the fiscal year ending June 30, 1876.

18 Stats. at Large, p. 367.

"For rent of house numbered nine hundred and fifteen E street northwest, eighteen hundred dollars: *Provided*, That the above sum shall not be deemed to be paid on account of any lease for years of said building: *Provided, however*, That at the end of the fiscal year the Postmaster-General be directed, upon the demand of the lessor, to deliver up the possession of said premises."

The Court of Claims gave judgment for the petitioners for $1,800.

The lease is fully set out in the findings of fact by the Court of Claims, as follows:

FINDINGS OF FACT.

"This case having been heard before the Court of Claims, the court, upon the evidence finds the facts to be as follows:

"I. On the 6th of June, A. D. 1873, the Postmaster-General and the claimant, Bradley, made and executed an indenture, of which the following is a copy:

"'This indenture, made this sixth day of June, in the year one thousand eight hundred and seventy-three, by and between Andrew C. Bradley, of Washington, D. C., of the first part, and John A. J. Creswell, Postmaster-General,

for and in behalf of the United States of America, of the second part, witnesseth: That the said party of the first part, for and in consideration of the rents, covenants, and agreements to be paid, kept, and performed by the party of the second part, doth hereby demise and lease unto the said party of the second part those certain premises, with the four-story brick house and brick stable thereon, situated on the north side of E street, between 9th and 10th streets, in the city of Washington, in the District of Columbia, and known as house numbered 915 on said E street northwest, to have and to hold to the party of the second part for the term of three years from and after the 5th day of June, Anno Domini one thousand eight hundred and seventy-three, with the privilege to the said party of the second part of a renewal of the said term for the further period of two years.

"'The said party of the second part yielding and paying therefor the annual rent, during the said term, and a subsequent renewal thereof, as aforesaid, of four thousand two hundred dollars ($4,200), payable quarterly, on the 30th day of September, the 31st day of December, the 31st day of March, and the 30th day of June.

"'And it is hereby mutually understood and agreed, by and between the parties hereto, that this lease is made subject to an appropriation by Congress for the payment of the rental herein stipulated for, and that no payment shall be made to the said party of the first part on account of such rental until such appropriation shall be available, and that as soon as practicable after such appropriation shall become available, the arrears of the rental then due shall be paid in full, and thereafter payment shall be made at the time and in the manner hereinbefore stipulated.

"'And it is hereby agreed by said party of the first part that he will, at his own expense, remove such partitions and construct such partitions, with necessary doorways and doors, in said building, and construct such water-closets, with the necessary water connections, as may be required by the supervising architect of the Treasury Department, and that he will leave in good order all gas-fixtures now in said building for the use of the said party of the second part; and the party of the second part will keep the said premises in good repair during the continuance of this lease and any renewed term thereof, and the expenses of any alterations of or additions to the interior, not herein otherwise

provided for, so as to adapt it to the use of the United States, and not calculated to damage the premises, are to be borne by the party of the second part, and all taxes and assessments legally levied or charged upon the property are to be paid by the party of the first part.

"'And it is hereby further provided that in case the premises, or any part thereof, during said term, or the renewal thereof, be destroyed or injured by fire or other unavoidable casualty, so that the same shall be thereby rendered unfit for use, then the rent hereinbefore reserved, or a just and proportionable part thereof, according to the extent and nature of the injury sustained, shall be suspended or abated until the said premises shall have been put in proper condition for use, by and at the expense of the said party of the first part; and the said party of the second part covenants to deliver up the said premises to the party of the first part at the determination of this lease, or at the end of any renewal of the term thereof, in good order and condition, reasonable wear and use thereof, and injury by unavoidable fire or other casualty, excepted.

"'And it is further stipulated that the party of the second part may, at or before the delivery of the premises aforesaid, remove such additions to or improvements of the same, placed on the premises by the said party of the second part, the removal of which, as aforesaid, will not injure the premises, as he, the said party of the second part may elect so to do.

"'In witness whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

"'A. C. BRADLEY. [SEAL.]
"'JNO. A. J. CRESSWELL, [SEAL.]
"' *Postmaster-General.*

"'Signed, sealed, and delivered
in presence of— "'T. A. SPENCE,
"'A. G. MILLS.'

"II. The premises described in said indenture were sold and conveyed, and the lease was assigned by said Bradley to Alexander R. Shepherd, and by him conveyed and assigned to George Taylor, Samuel Cross, and Peter F. Bacon, as alleged in the petition and in the amendment thereof.

"III. Said premises were used and occupied for the uses and purposes of the Post Office Department, and for the

benefit of the United States, under the direction of the Postmaster-General, from the time of executing said indenture until and including June 30, 1876, as well as subsequently thereto.

"IV. The claimants have been paid the rent of said premises, through special appropriations of Congress, up to and including June 30, 1875, but have been paid nothing for the year ending June 30, 1876.

"V. It does not appear that demand has ever been made upon the Postmaster-General, on the part of the claimants, for delivery up of the possession of the premises.

"CONCLUSION OF LAW.

"On the foregoing facts and the statutes in relation thereto, the claimants are entitled to recover the sum of $1,800."

From this judgment of the court Judge Nott dissented.

Record, p. 28.

POINTS OF ARGUMENT.

The questions presented by this appeal relate to the interpretation of the lease and the legal effect of the legislative enactments referred to in the foregoing statement.

The lease contains the usual covenants, by which the relations of landlord and tenant are commonly created and defined. It is for a limited term of years. It reserves a rent certain as the consideration for the demise. It binds the lessor to keep the demised premises in repair. It provides for the delivery of possession by the lessee at the expiration of the lease. Its only peculiarity is to be found in the following clause relating to the payment of the rent:

"This lease is made subject to *an appropriation* by Congress for the payment of the rental herein stipulated for, and no payment shall be made * * on account of such rental until *such appropriation* shall be available, and that as soon as practicable after such appropriation shall become available the arrears of the rent then due shall be paid in full, *and thereafter payment shall be made at the times and in the manner hereinbefore stipulated.*"

I.

It is contended, on behalf of the United States, and a majority of the Court of Claims have decided, that by this covenant the lessor became bound to give the government possession of the premises demised for three years and for two additional years, if the government so elected, and to accept in consideration of the demise, not the stipulated rent, but such sum as the lessee should think proper to pay; *and that thereby the lessor acquired no right to demand or receive, and the lessee came under no obligation to pay, any sum whatever in respect of the rent, except such sums as Congress might from time to time appropriate.*

The construction adopted by the Court of Claims is in violation of the settled rules of interpretation applicable to contracts and to the relations of landlord and tenant, and is wholly inconsistent with the intentions of the parties as expressed in the other provisions of the indenture.

a. It is unreasonable in that it attributes to the lessor a manifestly irrational purpose and intent. It is incredible that any owner of valuable premises should deliberately and intentionally covenant with his tenant to give the tenant possession of his property for five years, keeping it in the meantime in good repair and making extensive improvements, and to accept therefor whatever the tenant might think proper to pay.

It is equally incredible that the lessee and the agent of the government should have intended to agree and to put in writing an agreement to submit to Congress, what the Court of Claims say they did submit, viz., "*the right to make or refuse appropriations.*"

Record, p. 26.

b. It destroys, instead of preserving, the lease as a lease, and all its covenants and conditions save the one which is for the advantage of the lessee.

It takes from the lessor all the benefits of the whole contract and confers them on the lessee. It takes from the

lessee all liabilities and obligations and imposes them upon the lessor. It changes an intended tenancy for a definite term into a tenancy at will, and a definite and certain rent into optional payment, wholly indefinite as to time and amount.

c. It is inconsistent, not only with the general conditions of the agreement, but with the obvious meaning of other provisions in the same clause or covenant which is relied upon to save the tenant from liability.

It was agreed, among other things, that when "an appropriation" was made, *thereafter*, payments should be made quarterly in the manner prescribed by the lease. This provision for regular quarterly payments after "an appropriation," is wholly irreconcilable with the theory that the lessee intended to leave the time of payment, as well as the amount, to the arbitrary determination of the tenant.

II.

1. It is contended on behalf of the appellants, that the claim under consideration was inserted, not for the purpose of making the *legal rights and relations* of the parties to the lease dependent upon any future event, but merely to designate the method and source of payment. The true reason for the introduction of the covenant is admirably stated in the dissenting opinion of Judge Nott, as follows:

"We may infer that there was need of such a clause in this lease, from the fact that the post office is an exception to the great treasury system of the United States, inasmuch as, on the one hand, it collects and disburses immense revenues irrespective of appropriations by Congress, and on the other its disbursements are not under that general supervision which gathers up, sooner or later, all other accounts and disbursements and subjects them to the rigorous test of being allowed or disallowed by the comptrollers of the treasury. The Postmaster-General, unlike the heads of all other executive departments, is his own comptroller. Undoubtedly he is bound to make no payments except in pursuance of law, like other disbursing and administrative

officers; but still it is within his power, unlike other disbursing and administrative officers, to pay claims upon his department, and then pass upon the validity of both the account and the payment. If the sixth auditor rejects a claim on the post office, the Postmaster-General, like a comptroller of the treasury, can overrule the decision and direct payment of the claim. It was, therefore, eminently proper for him to make payment of this rent, so far as his official duty was to be concerned, dependent upon the specific appropriations of Congress; and the propriety of his so doing only renders it clearer that the clause in question was intended to regulate his administrative action, and that the covenants which fixed the tenure of the lease and the rent to be paid were intended to define the legal rights of the parties."

Record, p. 32.

2. If, however, this court shall be of opinion that the agreement contemplated that the legal rights of the parties, as well as the methods of payment, were to be determined by Congressional action, then it is respectfully submitted that the contract being subject to acceptance or ratification by Congress, the ratification was to be in the form of and made manifest by an appropriation, and that the appropriation when made was an acceptance and ratification of the lease, and validated it for the entire term, and entitled the lessor to the stipulated rent.

3. The construction contended for by the appellants is to be preferred, because—

It preserves rather than destroys the entire agreement.

It is consistent with and gives effect to all its conditions and covenants.

It is entirely reasonable and just, in view of the public statutes then in force, and of the situation of the parties respectively.

If it be true that the acts of March 2, 1861, (12 Stat., 220,) and of July 12, 1870, (16 Stat., 251,) limited the authority of the Postmaster-General and deprived him of the power to make a lease for five years, then it was obviously reasonable, proper, and necessary to refer and submit to Con-

gress, not the right to make or withhold appropriations, for that Congress already had, and the contract of parties could not bestow it or take it away, but the contract of lease for approval and ratification. That such was the intention of the parties to the agreement may fairly be inferred from the foregoing considerations.

III.

Apart from and independently of the intentions of the parties to the lease, it is apparent that Congress considered the lease to have been presented as a conditional contract for a term of years, to be approved or disapproved, and that the action taken by Congress was intended to be and was, by implication, an acceptance and ratification of the lease for the whole term.

On the 16th of December, 1873, the government was in possession of the premises, having entered under the lease about six months before. On that day the Postmaster-General sent a copy of the lease to Congress and requested an appropriation, out of any money not otherwise appropriated, of "the sum of $4,486.46, being the amount required for *rent* of house 915 E street northwest, from June 6, 1873, to June 30, 1874, * * * and the sum of $4,200, to be added to the estimate for contingent expenses of the Post Office Department * * * for the fiscal year ending June 30, 1874, for rent of building above mentioned."

Record, p. 5.

By the act approved June 20, 1874, (more than a year after the lease was made,) Congress appropriated the exact sum fixed by the lease for the *rent* of the premises, and named and described the premises for which the rent was to be paid.

By act approved June 22, 1874, Congress appropriated another year's rent for the premises, which were again designated and described.

To this appropriation was added the proviso that "*hereafter* no contract shall be made for the rent of any building

or part of any building in Washington, *not now in use by the government*, to be used for the purpose of the government, until an appropriation therefor shall have been made in terms by Congress."

18 Stat., 144.

It is submitted that if Congress had not intended to recognize and validate the contract, it would not have provided in such specific terms for the payment of rent, nor would it have thought it necessary to provide that thereafter, *except as to buildings* THEN IN USE IN WASHINGTON, no contract should be made until an appropriation had been made.

If Congress had intended *not* to recognize and validate the lease for the entire term, it would have done, as a subsequent Congress did, appropriate the requisite money without reference to the term, with a proviso that the same should not be deemed to be paid on account of any lease for years.

In view of the information that was communicated to Congress, the acts of Congress referred to constituted a ratification of the contract.

The affirmation of an agreement entered into by a public officer without authority, relating to a subject within the control of Congress, need not be in terms of direct assumption, but it may be inferred from acts and conduct inconsistent with any supposition other than an intended ratification, and especially it may be inferred, and justly inferred, from legislation indirectly referring to the contract and proceeding upon its assumed validity.

While it may be admitted that where the United States is a principal, acts and omissions which would create a presumption of ratification in the case of an individual will create no presumption against the government, the action of Congress, when fully cognizant of all the facts, in accepting the benefits of a contract, has the same legal significance and must have the same legal consequence as similar action by an individual.

Fremont vs. United States, 2 N. & H., 461.

Story on Agency, 8th ed., sec. 239.

In the case of McCauley vs. Brooks, reported in 16 Cal., p. 1, the controversy related in part to the validity of a contract made by the board of state prison commissioners to lease the state prison grounds and property for a period of five years. The objections urged were the alleged want of authority in the commissioners to make the contract, and the alleged forfeiture of the lease by the assignment. After referring to the failure of the legislature to interpose any objection at the time, and to the effect of acquiescence and part performance, the court, Field, C. J., delivering the opinion, say: "In the act of April 7, 1856, appropriating moneys to defray the expenses of the prison up to March 28, passed after a copy of the contract with Estell had been transmitted to the senate, *the legislature recognized the existence, and, in effect, the validity, of the contract*, in the provision that no person should receive any pay for supplies furnished under any contract with the directors of the prison until he surrendered such contract and relieved the state from all liability for such supplies 'furnished *after* the leasing of said prison by the board of commissioners under an act passed at this session of the legislature.' That provision was manifestly adopted under the supposition that the responsibility for supplies furnished subsequent to the time the prison was received by the lessee, had devolved upon him, and that the contract for the leasing imposing such liability was valid and binding."

In the case of Roberts et al. vs. The United States, (92 U. S. Rep., p. 41,) it was held by this court that the general reference of a claim by Congress to the Court of Claims, although the act did not in express terms ratify the transactions, was in effect a ratification of the agreement, which provided for "such additional allowance *as in the judgment of Congress might be considered equitable.*"

IV.

The action of Congress was a ratification of the contract *in omnibus*, and fixed the legal relations and rights of the parties, and was final and irrevocable.

When a contract is made up of several inter-dependent conditions or covenants, the approval cannot be of a part; the principal must adopt the whole or none. He cannot accept the covenant that benefits and repudiate one that is injurious. The covenant that the *rent* was to be $4,200 per annum, and that the term was to be for three years, were as much a part of the agreement as the covenant that the payment of the rent should be out of an appropriation to be made by Congress. The government could not accept the covenant that related to the method of payment and ignore the covenants that fixed the sum to be paid and the length of the term.

"When a ratification is established as to a part, it operates as a confirmation of the whole of that particular transaction of the agent."

A ratification once deliberately made, upon a full knowledge of all the material circumstances, becomes *eo instanti* obligatory, and cannot afterwards be revoked or recalled.

Wharton's Commentaries on Agency, secs. 72 & 73.

V.

If it should be held that the action of Congress did not ratify the contract and validate the lease for the entire term, yet it must be admitted that it did validate the lease for the first and second years of the term; and as the government entered the premises and *maintained possession under the lease*, the government is liable for the stipulated rent for the third year of the term.

It is a settled and indisputable principle of the law governing the relations of landlord and tenant, that a tenant holding over after the expiration of his lease, with the consent of the landlord, becomes a tenant from year to year, *subject to the terms and conditions of the original lease.*

Taylor's Landlord and Tenant, sec. 22.
Kingler vs. U. S., 4 N. & H., 407.
Baker vs. Root, 4 McL., 572.

A lease for years, though void as to the term of years, is good for one year if the lessee enters, and the tenancy thereafter becomes a tenancy from year to year.

A lease void under the statute of frauds for want of authority of the agent who executed it, *will regulate the rights of the parties during the actual existence of the tenancy.*

Taylor's Landlord and Tenant, sec. 26.

Porter vs. Bleiler, 17 Barb., 140.

The rights and liabilities of the parties are to be measured and determined by the lease under which possession was obtained, and it is not within the power of either party to change the terms of the tenancy without the assent of the other.

VI.

Furthermore, if the lease was made without authority of law, and was void, and was never validated, the right of property being in the petitioner, and the government having entered upon and occupied the premises, the government is to be deemed as having entered as a tenant under an implied lease, and is bound to make a fair and reasonable compensation for the rent or the use and occupation of the premises.

It has been expressly held by this court that in the absence of an express contract, as when the express contract is void, the government is liable for the value of the property which it has received and used.

Solomon vs. The United States, 19 Wall., 17.

United States vs. Gill, 20 Wall., 517.

It was urged before the Court of Claims that the enactment and the approval of the acts hereinbefore referred to, was a formal and authoritative determination of what was a fair and just compensation for the use of the premises, and that the government was bound to pay at the rate thus fixed and determined, so long as it continued its occupancy of the premises.

It was also urged that the proofs in the case were convincing and uncontradicted that the rate specified in the

lease and paid during the first two years of the term, is but a fair and reasonable compensation for the use and occupation of the premises during the third year of the term, in view of the rents that were paid for buildings in the same neighborhood.

The Court of Claims held, however, that they were not at liberty to consider the rental value of the premises, and that whatever the value of the premises might be proved to be, the claimants were only entitled to recover the amount appropriated by Congress.

VII.

From the foregoing considerations it is respectfully submitted that it necessarily follows that the United States is liable for the sum claimed in the petition, unless the lessor did covenant in and by the instrument which defined a term for years and fixed the yearly rent, to end the term at the will of the tenant, and to accept whatever the tenant chose to pay. We have attempted to show that such an interpretation of its meaning does violence to the obvious intentions of the parties, to the settled rules of interpretation, and to the plain principles of justice and fair dealing. It derives no force or authority from any adjudicated case. To say that *Church Warden vs. The Queen*, 1 Law Reports Queen's Bench, 1865, p. 199, referred to in the opinion of the court, is an authority, is to *assume* that the appellants here *did covenant* that their legal rights should wholly depend upon continued Congressional appropriations, when the very question here in controversy is whether or not the parties to the lease did so covenant.

VIII.

The judgment of the Court of Claims should be reversed and the case remanded with directions to the Court of Claims to enter a judgment in favor of the appellants for $4,200.

J. HUBLEY ASHTON,
NATH'L WILSON,
Of Counsel for Appellants.